

# REGIONAL FIBER CONSORTIUM

Better Telecommunications Services for Rural Oregon

July 14, 2011

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street SW  
Washington, DC 20554

Re: Acceleration of Broadband Deployment WC Docket No. 11-59 Comments of Regional Fiber Consortium

Dear Ms. Dortch:

This is a response to the FCC NOI Docket Number 11-59. A summary of the observations and conclusions that can be drawn from these comments is offered at the beginning to facilitate review.

The Regional Fiber Consortium feels that the proper approach to evaluating uses of the rights-of-way should:

- Recognize the need to balance competing demands on rights-of-way
- Recognize that the greatest barrier to broadband deployment is the need for capital
- Recognize that the greatest opportunity for broadband deployment would come by opening existing infrastructure in the rights-of-way to competitive use
- Acknowledge state and local government commitment to broadband deployment, don't assume that responses to local conditions reflect an opposition to broadband deployment
- Recognize that a commitment to equality of treatment among similarly situated providers requires that new providers meet the same requirements of established providers

The Regional Fiber Consortium recommends that the FCC take the following actions:

- Take all possible steps to make capital available to encourage broadband deployment.
- Take action and establish policies to facilitate the competitive use of existing facilities by enforcing open network policies, especially for recipients of USF monies.
- Exercise caution in creating national policies for local issues; address only well documented problems that have a system wide impact.

## **Introduction to the Regional Fiber Consortium**

Because it is relevant to many of the presumptions and questions raised in the NOI, we would like to start with a bit of an introduction to the Regional Fiber Consortium (RFC). The RFC was formed in 1999 to promote the development of broadband services by twenty five local governments in Oregon. The RFC was formed to assist private providers build a fiber based infrastructure connecting the western United States to the rest of the country and to Asia. These private providers, now represented by Level 3 and 360 Networks, originally opened a dialogue with the local governments who eventually formed the RFC because of the need for right of way construction permitting. The RFC not only provided assistance with the construction of cable in their rights-of-way, they also provided assistance to the providers in negotiations with the state and with the federal landowners who needed to review and approve the construction.

The local governments who formed the RFC came together because the original plans of these national providers did not include developing broadband service in any of the communities along the route. The local governments of the RFC were able to form a mutually beneficial alliance with the national providers. The RFC was able to work with local governments (RFC members and non-members) to assist with the local right of way permitting process and to provide important local context for the state and federal permitting process, and in turn the RFC was able to negotiate for the installation of additional dark fiber infrastructure for the RFC to try to connect these communities.

Since that time the RFC has worked to try to find providers to bring service to the members of the RFC and other areas of Oregon served by the RFC fiber. Oregon state agencies, members of the RFC and competitive local exchange carriers have made use of the RFC fiber to bring real broadband to the area. Despite repeated attempts, however, none of the incumbent local exchange carriers or other national broadband providers have responded to the RFC's offers to work together to improve broadband services in the area. Instead, several national carriers have taken advantage of the local connections that were made possible by the foresight of the members of the RFC to establish minimal broadband services in these communities. Although they chose to ignore the RFC and establish their own connections, at higher prices, and although the services available are mostly low grade, asynchronous DSL services, the RFC does count this expansion of broadband as one of its successes.

Over time the difficulties of broadband deployment in the region has resulted in some shrinkage in RFC membership. While the original members all remain committed to broadband deployment, some have withdrawn from active participation in the RFC because of other claims on scarce resources and the frustrations of limited success.

Recently the RFC contributed match to enable the Lane Council of Governments (LCOG) to be a successful BTOP applicant. The LCOG application will further the RFC goal of bringing competitive broadband services to most of the RFC area. The RFC continues to work with LCOG to accomplish this goal. Both RFC and LCOG have adhered to local right of way permitting and compensation rules, and have not encountered any delays or difficulties in that regard.

## **General Comments**

The RFC's perspective is unique, in that it has a variety of experience to draw upon. Like the FCC, the RFC has as a mandate to improve deployment of broadband services. The RFC is also a telecommunications provider, trying to expand broadband services. The perspective that drives the RFC's first and most general suggestion to the FCC comes from the RFC's relationship with its members, local governments who must regulate their rights-of-way.

The FCC begins with an assumption that there is something wrong - that current right of way policies are somehow a major barrier to further deployment of broadband. This assumption is contradicted by several comments throughout the NOI, which note that the public rights-of-way are already extensively used for telecommunications infrastructure. The FCC notes that the NOI reflects recommendations of the TAC, and that the recommendations listed as coming from the TAC (footnote 26) urge the FCC to promote best practices and uniformity in rights-of-way access and tower siting. Nowhere is there any indication that there is a real problem, or what the problem is, or how important the problem might be. Further, this very limited perspective ignores the true nature of the right of way and the nature of government.

The key to understanding the use of rights-of-way is the need for balance. The members of the RFC share a commitment to broadband deployment. But they also have many other commitments. Local rights-of-way and the prime locations for wireless facilities are not merely locations for broadband facilities. The RFC members must protect these areas for multiple uses. While it is not within the mandate of the RFC (or the FCC) to consider the impact of broadband promotion on other local government priorities, such as public health and safety, the RFC must acknowledge that its local government members have a much better sense of where broadband promotion fits into the hierarchy of local priorities. The RFC does not presume that, just because broadband is important, it is the only thing that is important. The RFC does not presume that because it is mandated to promote broadband in the region, it has a better sense of how several competing interests must be balanced. The RFC urges the FCC to recognize the several issues that come into play whenever local priorities and regulations are being set, and provide some deference to locally informed choices regarding the uses of the rights-of-way and locations for wireless facilities.

Access to federal lands is the best example of the importance of balance. Federal lands, like local rights-of-way, are public lands, but there is no suggestion that the FCC should study overriding all other regulations to facilitate broadband deployment on federal lands. The value that the RFC provided to the construction companies building infrastructure through the RFC region was its perspective on how to balance the several competing needs of federal policies to expedite construction of the broadband infrastructure. This local perspective on how to best balance the several federal policies involved in accessing federal lands was what enabled the most rapid deployment of broadband infrastructure

In Oregon fifty percent of the land is owned by the federal government, and all the major limited access highways are federally controlled. In the west in general and Oregon in particular, questions concerning right of way access and tower siting are federal questions as much or more than they are local questions. It is the RFC's experience that federal caution –consideration on a case-by-case basis – in allowing use of federal lands for rights-of-way and tower siting affect broadband deployment in this region. This point is not made to suggest that the federal government get its own house in order before it looks at what to do about state and local rights-of-way. It is instead a reminder to the FCC to understand the actions of states and local governments by understanding the actions of its fellow federal agencies. Access to public land for any purpose requires a complex balancing of many competing interests. General purpose governments cannot put a single interest ahead of all others all the time. A uniform approach undermines the ability of governments to meet their obligations to all of the people it serves.

### The Real Barriers to Deployment

The FCC begins its notice by saying that it is concerned with “key challenges and best practices in expanding the reach and reducing the cost of broadband deployment by improving government policies for access to rights-of-way and wireless facilities siting.” As a telecommunications provider it is the RFC's experience that the key challenges in expanding the reach and reducing the cost of broadband deployment are not government policies for access to rights-of-way. The key challenges are, in the direct experience of the RFC, the access to capital and the non-competitive practices of many broadband providers. Unless and until these issues can be addressed, questions about the marginal costs of access to rights-of-way and wireless locations are of no significance at all.

### Capital

Obtaining the capital is the greatest barrier to broadband deployment. The development of broadband, especially in the rural areas that make up the bulk of the service area of the RFC, is incredibly expensive. When it costs more than half a million dollars to bring real broadband service to a community of 2,000 people, the addition of another few thousand dollars to acquire

access to the rights-of-way is not significant. When you calculate how long it will take the community and its customers to pay that cost, the real barriers to broadband deployment come into play, and local government management of the public rights-of-way is not a factor.

The RFC did find a small competitive local exchange carrier who leased some of the RFC fibers and promised to bring broadband services to the communities of the RFC. This CLEC was never able to get the capital together to start building out services. Local access to the rights-of-way was never a problem. In the two communities where the RFC was able to secure some additional funding to build additions to the fiber backbone, permits were granted and the construction went quickly, but the lack of access to capital killed the enterprise.

### Open Network Access

If the original intent of the Federal Telecommunications Act of 1996 were carried out, with its commitment to competition and shared use of facilities, it would be much more likely that broadband services would improve throughout the United States. Instead, incumbents, who have long since recouped their investment, are allowed to create cost barriers that prevent others to deploy broadband. Especially in rural areas, the availability of broadband is severely limited by price. The incumbent carrier sets its broadband services at a very high price, and its control of the infrastructure through very high prices prevents any competitive entrants from offering services in the same areas.

The RFC has been frustrated in its efforts at broadband deployment because incumbent carriers will not deal with the RFC because of its open network requirements, and will not open their networks, already fully depreciated, to any competitor who might compete through lower prices or better service.

### History

To turn Oliver Wendell Holmes to current issues: a page of history is worth a volume of comments. The successful deployment of telephone services and electrical services throughout the nation should be the model for the best practices for broadband deployment. Public involvement in these activities is instructive. Local control of the rights-of-way existed and was not a barrier. A key aspect of this infrastructure deployment was, of course, the capital support provided by the public. Rural electrification and the universal service fund were keys to the deployment of these infrastructures. The FCC is to be commended for taking up the question of application of the universal service fund to broadband deployment.

The other lessons of this history should be remembered as well. There was encouragement and support by the federal government, but no limit on local action. The money

to support universal deployment of utilities was not just given away with no accompanying service requirements. Applied to today's circumstances this means that at a minimum any entity that is the recipient of support for broadband deployment should not only meet high standards for the services that it makes available, but should also be required to make all of its facilities into an open access network where others can compete equally.

### **Application procedures**

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.

The RFC chooses to answer this from its perspective as a provider seeking permits. For the most part the RFC has not encountered problems or restrictions in seeking permission to use the rights-of-way. The RFC has applied for permits to use rights-of-way in several cities, including cities not affiliated in any way with the RFC. In the RFC's experience local governments are eager for the opportunity to facilitate the development of broadband services. Anecdotes about delays and denials somewhere else are commonly bandied about, but there are few real examples of real problems. Imposing some national standard that overrides the thousands of unique situations across the nation will not serve anyone well, especially where there are no specific examples of common problems.

### **Sources of Delay**

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications

In the RFC's experience, the main sources of delay are access to capital and, where federal lands are involved, the lengthy environmental process that is involved. Dealing with the unique conditions of multiple jurisdictions is no different than a provider dealing with the details of hundreds of pole attachments with dozens of different owners of the poles. Local governments have been forced by limited financial support to cut back on services, including hours of service and rapid responses to public requests. The conflict between wanting rapid accommodation to special demands and objecting to having to pay anything for the cost of government service is not unique to telecommunications providers, but the FCC must recognize that there is a direct link between having to provide a service and being able to recover the cost of that service. It would not be fair to deprive local governments of income to pay for expected services, then penalize them for their inability to meet externally imposed deadlines.

Everyone assumes that because it is "the public right of way" that every member of the public has an equal right to use the right of way, even if others are also using it. As a practical matter, of course, the right of way, just like the wireless spectrum, has limited capacity, so there is not room for everyone in the same space all at once. Again, speaking from personal

experience, a major source of delay in the construction of the necessary infrastructure to bring broadband to the nation is other private users of the rights-of-way who are not anxious to share. Even though in Oregon the state has mandated a process of sharing pole attachments, the utilities often find ways to delay or deflect the process.

### **Improvements.**

The Commission asks whether there are particular practices that can improve processing. RFC members themselves monitor their processes, and work to keep them efficient within the parameters of available funding and other parameters. There are important differences in construction and operation issues even within the area included within the RFC. Any differences in the right of way permitting process are trivial when compared to the real barriers, and deflecting attention from the real reasons will not actually further the goal of broadband expansion. From the local perspective it seems that the creation of a single federal process or federal guidelines that do not take into account the variety of local situations will not be an improvement. Removing local flexibility will not help when ultimately the activities must be implemented at the local level.

### **Permitting Charges**

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.” These are commonly charged. In the RFC’s experience, there are uniform charges for all users of the right of way, regardless of the purpose or size. There are no mandated in-kind contributions in this region that the RFC is aware of. Most members of the RFC allow the option for in kind services as an alternative, but these are not mandated.

In Oregon the Federal Cable Act, the Federal Telecommunications Act of 1996 and state law mandate that charges for access to rights-of-way are equal for all similarly classifiable telecommunications providers. For the most part the cost of acquisition of the rights to use these facilities is a small marginal cost, and the cost of operations thereafter is a similar marginal cost of from three to seven percent. Speaking from personal experience, the RFC can say that these costs are trivial when compared to the cost of constructing a facility. They are also exactly the same for every provider.

### **Local Policy Objectives.**

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area. As a telecommunications provider, the RFC cannot speak directly to this issue. As an organization made up of several local governments the RFC can say by observation that the policy objectives vary somewhat across jurisdictions.

In terms of policies to promote broadband deployment, the primary implementation step in this regard is the desire to treat all telecommunications applicants in a similar manner, to reduce as much as possible any barriers to the development of competitive broadband services.

The policy objectives in this area that lie behind local government regulations of the rights-of-way would be:

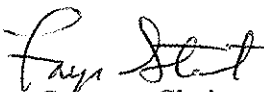
- Ensuring public safety
- Maintain road surfaces and minimize deterioration from road cuts
- Equality of treatment of all right of way users to maximize the potential for use of the rights-of-way, including but not preferring telecommunications
- Avoid traffic delays and disruptions or damage to adjacent properties
- Obtain fair compensation for use of public property and recover the direct and indirect costs associated with right of way use permitting

Cost recovery and compensation are listed together to reflect that they are really the same thing. There are many costs associated with maintaining and protecting the right of way that are not easily quantifiable, or expressed in a onetime charge. These indirect costs, including such things as record keeping, monitoring and protecting all uses of the right of way, and so forth, are real costs that are often not quantified but are there nonetheless.

### **Possible Commission Actions**

Finally, the Commission asks what actions the Commission might take in this area. The Commission should not take any action in this area without receiving documented evidence of actual circumstances that add represent a real problem that can be solved at the national level. The Commission should be wary about proceeding on a series of anecdotal or undocumented complaints that reflect decades old practices. Speaking from experience as an entity trying to develop broadband across an area larger than Rhode Island, Connecticut, Delaware and New Jersey combined, the greatest barriers to broadband deployment are the lack of capital and the unwillingness of incumbent carriers to make their facilities available for competitive use. Speaking from the perspective of local governments that have been working to promote broadband deployment for more than a decade, no policies aimed at addressing other issues, whether they are real or imagined, will have any salutary effect unless and until those larger issues are addressed.

Thank you for the opportunity to address the Commission on this issue.

  
Faye Stewart, Chair  
Regional Fiber Consortium